

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 3:17-cr-00066
)	Chief Judge Crenshaw
CASON EUGENE MORELAND)	

**IN CAMERA MOTION OF DEFENDANT CASON EUGENE MORELAND FOR A
MITIGATED SENTENCE AND DEPARTURE/VARIANCE
BELOW THE SENTENCING GUIDELINES**

COMES NOW the Defendant, **Cason Eugene Moreland**, by and through his undersigned counsel, and hereby files this request for a mitigated sentence and departure/variance below the Guidelines, considering factors under 18 U.S.C. § 3553(a). Defendant Moreland respectfully suggests that in weighing the factors in § 3553(a), the Court should impose a mitigated sentence in this case which is below the advisory guideline range calculated in the presentence report. In *United States v. Booker*, 543 U.S. 220, 245, 125 S.Ct. 738, 160 L.Ed. 2d 621 (2005), the Supreme Court held that the Sentencing Guidelines were advisory. Accordingly, “a district court is permitted to vary from those guidelines in order to impose a sentence which fits the mandate of [§] 3553(a).” *United States v. Collington*, 461 F.3d 805, 808 (6th Cir. 2006).

Background

Cason Eugene Moreland is a 60-year-old husband and father of two adult children and also has one granddaughter. He is a former Davidson County General Sessions Court Judge who served with distinction for over 20 years. He was elected by the citizens of Davidson County three times and was selected by his judicial peers to be the Presiding Judge on four different

occasions. While serving on the bench, he founded and presided over the *Davidson County (Drug) Treatment Court* (DCTC); Co-Founded the *Cherished H.E.A.R.T.S. Program* (CH), an alternative sentencing program which focuses on assisting defendants who have been trapped in the sex trade industry; carried on the work of the *Veterans Court* which provides alternative sentencing and, in cooperation with the Veterans Administration, assists veterans charged with misdemeanor criminal offenses to access housing, education and employment; he presided over the *Bringing Justice to You* program which works in collaboration with the Davidson County Criminal Court Clerk's Office, the Davidson County District Attorney's Office, the Metropolitan Nashville Public Defender's Office, and the Metropolitan Davidson County Public School System, to conduct a "Saturday Court" at inner-city schools to provide legal assistance to those parents identified by the public school system who need help with legal problems, such as expungements, reinstatement of driver's licenses, declarations of indigency to waive unpaid fees, fines and court costs – all services directed at solving problems to make needy parents more employable; and, he was the Co-Chairman of the *Justice A.A. Birch Committee*, formed in 2016 to raise awareness regarding Justice Birch's career and service to the community and to raise funds for a life-size statue of Justice Birch which stands in front of the Criminal Courts Building, that bears his name. *See* separately filed *In Camera* Character Letters and a Sampling of Cards and Articles in Support of this Motion, Items 3, 4, 5, 6, 7, 8 & 9 (regarding DCTC); Items 10 & 11 (regarding *Cherished H.E.A.R.T.S.*); and, Item 12 (regarding *Bringing Justice to You*).

He was raised in the East Nashville and Madison areas and comes from humble beginnings. He attended Goodpasture High School in Madison and was active in athletics. He continued his academic and athletic career at the University of Tennessee Martin and later attended the Nashville School of Law and received a Doctor of Jurisprudence Degree in 1984.

He was engaged in the private practice of law between 1984 and 1995 as a sole practitioner, focusing on criminal defense and creditors' rights. In 1995, he was appointed General Sessions Judge by the Metropolitan Nashville City Council; was defeated in a special election in 1996; and, ran in the 1998 regular election cycle and served continuously until resigning on April 4, 2017.

Mr. Moreland officiated college football from 1992 to 2014. He was named a Mid-South Conference NAIA Football Official in 1994. He served the Ohio Valley Conference as a NCAA Official from 1995 to 2009. He was named to the National Football Foundation & Hall of Fame as Football Official of the Year in 2001. From 2009 to 2014, he served as a Southeastern Conference Official as an Umpire.

VARIANCE/DOWNWARD DEPARTURE

The circumstances of this case are sufficiently extraordinary to warrant a variance/downward departure based on Mr. Moreland's History of Exceptional Community Activities; Mr. Moreland's Physical Condition and His Mental and Emotional Health History; The Conditions of Mr. Moreland's Pretrial Detention; Mr. Moreland Poses Little Risk of Recidivism; and, Mr. Moreland's Two-Day Debriefing by the United States Constitutes Extraordinary Acceptance of Responsibility.

Booker requires this Court to correctly score an advisory guideline range and then comply with the entire statutory command of 18 U.S.C. §3553(a) by considering the factors listed in §3553(a)(1)-(7). This allows the Court to individualize a sentence which is "sufficient but not greater than necessary." *United States v. Booker*, 543 U.S. 220 (2005); *United States v. Cage*, 458 F.3d 537, 540 (6th Cir. 2006).

This Court may, and should, vary its sentence from the advisory guideline range if a variance sentence meets the requirements of 18 U.S.C. §3553(a). *Rita v. United States*, 551 U.S. 338 (2007). The court may vary its sentence based on its weighing of one or more of the §3553(a) factors. *United States v. Borden*, 365 Fed.Appx. 617, 619, fn. 2 (6th Cir. 2010). This

Court may vary a sentence because it disagrees with the advisory guideline range on general policy grounds, individualized fact grounds, or because this Court concludes a different sentence is appropriate regardless of the guideline range. *Rita v. United States*, 551 U.S. 338, 347-348 (2007). This Court may depart from the advisory guideline range based on the application of a guideline provision. *Id.* The same facts and analysis can support both a variance and a departure, *United States v. Grams*, 566 F.3d 683, 686-87 (6th Cir. 2009), but a variance is grounded in the District Court's broader discretion in considering the §3553(a) factors. *Irizarry v. United States*, 128 S.Ct. 2198, 2202-03 (2008).

A. *Mr. Moreland's History of Exceptional Community Activities*

Even before *Booker*, the Sixth Circuit acknowledged that charitable works and service to the community were an acceptable reason for a district court to grant a downward departure from the Guidelines. *United States v. Crouse*, 145 F.3d 786, 789, 790 (6th Circuit 1998) (noting that the Guidelines do not “limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.”). *See also United States v. Tocco*, 200 F.3d 401, 433-434 (2000) (acknowledging that community service is a valid basis for departure, but emphasizing that it is devotion of time that is significant, not merely the ability of a wealthy individual to donate large sums of money). Other circuits also recognized charitable works as a valid justification for downward departure from the Guidelines. *See United States v. Cooper*, 394 F.3d 172, 176-177 (3rd Cir. 2005) (authorizing departure based on the defendants’ “good works” and emphasizing that the defendant’s works included “hands on personal sacrifices which have a dramatic and positive impact on the lives of others. . .”); *United States v. Serafini*, 233 F.3d 758, 773 (3rd Cir. 2000) (downward departure justified by defendant’s generosity of time as well as money).

Mr. Moreland's career as a General Sessions Judge was highlighted by his devotion to public service. As noted in the *Background* section of this filing, while serving on the bench, he founded and presided over the *Davidson County Treatment Court*, co-founded the *Cherished H.E.A.R.T.S. Program*, carried on the work of the *Veterans Court*, presided over the *Bringing Justice to You* program, and served as co-chairman of the 2016 *Justice A.A. Birch Committee*.

One of the more impactful programs to which Mr. Moreland devoted countless hours and a significant emotional commitment was the *Davidson County Treatment Court* (DCTC), a three-phase alternative sentencing program which initially requires defendant/client participants to physically appear in court on a weekly basis to meet with the judicial officer for an intense, hands-on, progress review during phase one. Phase two steps down to bi-weekly court appearances; and, phase three transitions to monthly in-court progress review sessions. The DCTC is a collaborative effort involving the Court, the District Attorney's Office, the Public Defender's Office, the General Sessions Probation Department, the Davidson County Sheriff's Office, and various halfway house and treatment providers. The DCTC program takes at least one year for the defendant/client to complete and requires drug and alcohol treatment as well as self-help group meetings, public service work and employment. Compliance is monitored with random drug screens which begin with at least 14 screens per month which are reduced on an individualized basis depending on the success of the client. Under Mr. Moreland's direction, the DCTC graduated well over 200 clients and 23 drug-free infants were born to DCTC clients. The DCTC saved taxpayers tens of millions of dollars in incarceration fees and operated for five years without public funds. Recidivism rates have been positively impacted and less than 20 percent of DCTC graduates are rearrested. DCTC was one of the first "treatment courts" certified by the State of Tennessee.

The *Cherished H.E.A.R.T.S. Program* represents another significant contribution to the community by Mr. Moreland. He co-founded the program in 2016 to identify and serve defendants trapped in the sex trade industry. Along with alternative sentencing and treatment components, *Cherished H.E.A.R.T.S.* provides housing, education and employment in safe and secure environments. The *Cherished H.E.A.R.T.S. Program* founded by Mr. Moreland is the fourth such special court established in the United States.

B. Mr. Moreland's Physical Condition and His Mental and Emotional Health History

As noted in the Presentence Report and verified by records from various providers, Mr. Moreland suffers from a constellation of physical, mental and emotional problems. *See Revised PSR*, disclosed 11/21/18, ¶¶ 154-156 (depression, post-traumatic stress disorder, alcohol dependence); 157 (vicarious trauma as a result of his duties presiding over the Drug Court and Sex Trafficking Court)¹; and, 160-163 (alcohol abuse). The Presentence Report also discloses a number of serious physical conditions: hypertension and rheumatoid arthritis (¶¶ 148-150); complications from gastric bypass surgery (¶ 151); and, complications from two alcohol-related falls in 2016. *See United States v. Sabino*, 274 F.3d 1053, 1078-79 (6th Cir. 2001) (upheld a three-level downward departure due to defendant's age and physical deficiencies including ailments with his eyes and ears, and other factors).

C. The Conditions of Mr. Moreland's Pretrial Detention

Mr. Moreland has spent the last eight months in the custody of the United States Marshals Service lodged at the Grayson County Detention Center in Leitchfield, Kentucky. *See PSR* ¶ 17. From March 6, 2018, to and including, July 23, 2018, during his pretrial detention at

¹ Vicarious trauma has been described as negative changes which occur to humanitarian workers over time as they witness other people's suffering and need. *Understanding & Addressing Vicarious Trauma* by Dr. Laurie Anne Pearlman & Lisa McKay. *See also In Camera* Character Letters, etc., Item 15 (Article – *Judicial Wellness: Vicarious Trauma and Secondary Traumatic Stress in Judges*).

the Grayson County facility, Mr. Moreland was held in the following forms of confinement: (1) during the first interval, he was held in a 15 feet x 12 feet “drunk tank” with five other inmates, county and federal, who slept on the floor with the lights on for 24 hours, without television, commissary or a clock, and all six shared one open commode; (2) for the next interval, he was held in isolation/solitary confinement in a 9 feet x 12 feet room with no television, radio, commissary or clock, with a commode/sink combination and the lights on for 24 hours; (3) for the next interval, he was held in another isolation room in solitary confinement under the same conditions (a jail cannot keep an inmate in insolation for more than 30 days without an “administrative review;” to circumvent this rule, Mr. Moreland was moved to an identical isolation room but in a different pod); and, (4) for the final interval, Mr. Moreland was moved to yet another identical isolation room. On July 23, 2018, Mr. Moreland was moved to a medical pod on the “brown side” of the Grayson County Detention Center where he was housed with other inmates and allowed television and commissary. Undersigned counsel notified the U.S. Marshals Service in writing of Mr. Moreland’s conditions of confinement and respectfully requested that he be transferred out of solitary confinement expressing concerns about Moreland’s physical and emotional health. Counsel was advised that Moreland was then housed in isolation for “his safety due to his prior position.”

Courts have long recognized that when a defendant suffers consequences for his conduct in addition to the sentence imposed through the criminal court process, such collateral punishment can be taken into account in fashioning an appropriate sentence. *See, e.g., United States v. Pressley*, 345 F.3d. 1205, 1218-19 (11th Cir. 2003) (finding that district court had discretion to grant downward departure based on defendant having been on 23-hour-a-day lockdown during pre-trial confinement); *United States v. Williams*, 2009 WL 6446127 (MDTN 2009)

(inadequate nutrition, hygiene, and medical care, as well as lack of outdoor time, was an approved ground for variance).

D. Mr. Moreland Poses Little Risk of Recidivism

Cason Moreland is 60 years old, a first-time offender, has been employed throughout his adult life, and has a stable, supporting family. For all male offenders in Criminal History Category I, the recidivism rate is 15.2%. For those over age 50 at the time of sentencing, however, the rate in Category I is only 6.2%. For those who have been employed, the rate is 12.7%; and for those who were ever married, the rate is 9.8%. For those like Mr. Moreland who are educated, have been employed, have children, and over 50, the recidivism rate is certainly much lower. See U.S. Sent’g Comm’n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, (May 2004) [hereinafter *Measuring Recidivism*]. Finally, offenders like Moreland with no criminal history points have a lower rate of recidivism. See Sent’g Comm’n, *Recidivism and the “First Offender,”* (May 2004) [hereinafter *First Offender*].

Based on all of the factors present with Mr. Moreland, the Court can find that he poses little risk of re-offending in any manner. Accordingly, the sentencing concerns of “incapacitation” and “protecting the public from further criminal activities by the defendant” are non-existent in this case, which means the need for a further prison sentence of any significant length is diminished here.

The case law, too, makes clear that in imposing the lowest sentence sufficient to account for the need to protect the public from further crimes of Mr. Moreland, this Court should consider the statistically low risk of recidivism presented by Mr. Moreland’s history and characteristics. See, e.g., *United States v. Darway*, 255 Fed.Appx. 68, 73 (6th Cir. 2007)

(upholding downward variance on basis of defendant's first-offender status); *United States v. Hamilton*, 323 Fed.Appx. 27, 31 (2d Cir. 2009) ("the district court abused its discretion in not taking into account policy considerations with regard to age recidivism not included in the Guidelines"); *United States v. Holt*, 486 F.3d 997, 1004 (7th Cir. 2007) (affirming below-guideline sentence based on defendant's age, which made it unlikely that he would again be involved in a violent crime); *United States v. Urbina*, 2009 WL 565485, *3 (E.D. Wis. Mar. 5, 2009) (considering low risk of recidivism indicated by defendant's lack of criminal record, positive work history, and strong family ties); *United States v. Cabrera*, 567 F.Supp.2d 271, 279 (D. Mass 2008) (granting variance because defendants "with zero criminal history points are less likely to recidivate than all other offenders"); *Simon v. United States*, 361 F.Supp.2d 35, 48 (E.D.N.Y. 2005) (basing variance in part on defendant's age of 50 upon release because recidivism drops substantially with age); *United States v. Nellum*, 2005 WL 300073 at *3 (N.D. Ind. Feb. 3, 2005) (granting variance to 57-year-old defendant because recidivism drops with age); *United States v. Ward*, 814 F.Supp. 23, 24 (E.D. Va. 1993) (granting departure based on defendant's age as first-time offender since guidelines do not "account for length of time a particular defendant refrains from criminal conduct" before committing his first offense).

Moreover, his conviction in this case assures that Mr. Moreland will never hold a law license again or practice as an attorney. In determining whether there is a need for imprisonment to prevent future crimes, the defendant's inability to commit similar crimes in the future is highly relevant. *See, e.g., United States v. Olis*, 2006 WL 27160648, at *13 (S.D. Tex. Sept. 22, 2006) (granting substantial variance in part because "the attendant negative publicity, the loss of his job and accounting and law licenses, and the need to provide support for his family will provide adequate deterrence against any potential future criminal conduct.").

Indeed, the loss of one's business, professional reputation, and ability to ever work in his profession again are factors the Court should consider in fashioning a reasonable sentence for this defendant in this case. *See United States v. Gaind*, 829 F.Supp. 669, 671 (S.D.N.Y. 1993) (granting downward departure where defendant was punished by the loss of his business); *United States v. Vigil*, 476 F.Supp.2d 1231, 1235 (D.N.M. 2007) (finding variance appropriate where defendant was collaterally punished by loss of his position and reputation, widespread media coverage, and emotional toll of two lengthy public trials); *United States v. Samaras*, 390 F.Supp.2d 805, 809 (E.D. Wis. 2005) (granting variance in part because defendant lost a good public sector job as a result of his conviction).

F. Mr. Moreland's Two-Day Debriefing by the United States Constitutes Extraordinary Acceptance of Responsibility

On May 9, 2018 and May 11, 2018, Mr. Moreland, represented by counsel, engaged in a two-day proffer with federal prosecutors and FBI agents and answered all questions regarding the following topics: the nature of his relationship with victim Natalie Amos; all of the facts and circumstances underlying the conduct alleged in this case; his relationship with Nan Casey and the Davidson County Drug Court Foundation; his role as a non-board member of the Drug Court Foundation; expenditures of the Drug Court Foundation; trips taken out of the country with Nashville attorneys and judges; intervention on behalf of his future son-in-law; and, specific questions about a number of other individuals and public officials, etc. *See Revised PSR ¶¶ 79-85* (Mr. Moreland confirmed for prosecutors and agents the information contained in these paragraphs.)

Mr. Moreland recognizes that U.S.S.G. § 3E1.1 already provides for a downward adjustment for those defendants who accept responsibility and plead guilty in a timely manner. However, U.S.S.G. § 5K2.0, explicitly contemplates that a sentencing court may depart from the

guidelines “in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration in determining the guideline range, if the court determines that such circumstance is present in the offense to a degree substantially in excess of ... that which ordinarily is involved in that kind of offense.” U.S.S.G § 5K2.0(a)(3). Therefore, a variance is justified in cases of extraordinary acceptance of responsibility. *See United States v. DeMonte*, 25 F.3d 343, 349 (6th Cir. 1994) (“unusual willingness to cooperate” justified departure); *United States v. Lieberman*, 971 F.2d 989, 995-996 (3rd Cir. 1992); *United States v. Haut*, 107 F.3d 213, 222 (3rd Cir. 1997); *United States v. Brown*, 985 F.2d 478, 482-483 (9th Cir. 1993).

Although Mr. Moreland never had an expectation that he would receive a government motion for a substantial assistance reduction, the Court still retains the authority to vary from the advisory guidelines grounded in its broader discretion in considering the § 3553(a) factors. “A district court may, in its discretion, consider whether a defendant’s cooperation should be considered under 18 U.S.C. § 3553(a).” *United States v. Petrus*, 588 F.3d 347, 356 (6th Cir. 2009); *see also United States v. Martin*, 318 Fed.Appx. 313, 314 (6th Cir. 2008) (noting that the district court granted a 22-month downward variance based on substantial assistance where government refused to move for departure). In *United States v. Massey*, the Sixth Circuit explained that it has “recently re-affirmed that ‘although departures under § 5K1.1 require a motion from the government, variances do not.’” 663 F.3d 852, 858 (6th Cir. 2011) (citing *United States v. Gapinski*, 422 Fed.Appx. 513, 518 (6th Cir. 2011)).

Cooperation is also particularly relevant under the § 3553(a) factors because it is the best barometer that a “defendant will transgress no more[, will] respond to rehabilitative efforts[, and] not deem himself at war with his society.” *Roberts v. United States*, 445 U.S. 552, 558 (1980).

Mr. Moreland has clearly demonstrated through his extraordinary acceptance of responsibility that he wishes to make up for his transgressions. This further bolsters his plea for a mitigated sentence.

Conclusion

For all of the above-stated reasons, Mr. Moreland respectfully requests that this Honorable Court impose a sentence that is sufficient but not greater than necessary to accomplish the goals of sentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via the Court's electronic filing system unless not registered and, in that event deposited in the United States mail, postage prepaid, to:

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this 23rd day of November, 2018.

S:/ Peter J. Strianse
PETER J. STRIANSE